federal register

Friday
June 26, 1992

Part II

Department of Labor

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Office of the Secretary and the Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This document removes § 5.5(a)(4)(iv) of 29 CFR part 5, relating to the maximum allowable ratio of semi-skilled "helpers" to journeymen to be utilized on federal and federally-assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). On April 21, 1992, the United States Court of Appeals for the District of Columbia Circuit held that the fixed, maximum ratio of helpers to journeymen contained in this section was arbitrary and, therefore, invalid. All other provisions of the helper regulations were upheld. Section 5.5(a)(4)(iv) is, therefore, being removed to conform to the court of appeals decision.

EFFECTIVE DATE: June 26, 1992.

FOR FURTHER INFORMATION CONTACT: Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 27, 1989, the Department of Labor published a final rule governing the use and wage rates of semi-skilled helpers on federal and federally-assisted construction contracts subject to the DBRA (see 54 FR 4234, January 27, 1989). On December 4, 1990, the Department of Labor (DOL) published a notice implementing revised final regulations (see 55 FR 50148, December 4, 1990). The final rule became effective on February 4, 1991. In April 1991, section 303 of the Dire Emergency Supplemental Appropriations Act of 1991, Public Law No. 102-27, 105 Stat. 130, 151 (1991), prohibited DOL from spending any funds to implement or administer the final helper regulations. In compliance with this statutory provision, DOL did not implement or administer the final regulations during fiscal year 1991. Following the expiration of fiscal year 1991 and continuing resolutions, a new appropriations act was passed which did not contain the restrictive language. The Solicitor of Labor thereafter advised that the spending prohibition had expired and that implementation of the helper regulations was legally permissible. Accordingly, DOL began implementing the regulations. All Agency Memorandum No. 161 was issued on January 29, 1992, instructing contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations concluded after that date.

Various provisions of the final regulations had been challenged in litigation. On April 21, 1992, the United States Court of Appeals for the District of Columbia Circuit sustained all the challenged provisions of the regulation except for 29 CFR 5.5(a)(4)(iv), which had prescribed a maximum ratio of two helpers to every three journeymen on DBRA-covered construction projects. *Building & Construction Trades Department, AFL-CIO* v. *Martin*, Civ. No. 90-5345 (D.C. Cir. April 21, 1992). The court of appeals held that provision to be arbitrary and capricious.

In accordance with the decision of the court of appeals, DOL is removing 29 CFR 5.5(a)(4)(iv) from the Code of Federal Regulations.

Publication in Final

Pursuant to 5 U.S.C. 553(b)(B), the Department of Labor has determined that good cause exists for waiving public comment on this regulatory amendment. This finding is based upon the fact that the United States Court of Appeals for the District of Columbia has invalidated the portion of the current regulation which is the subject of this regulatory amendment. Accordingly, public comment is unnecessary.

Effective Date

Pursuant to 5 U.S.C. 553(d), the Department of Labor has determined that good cause exists for waiving the customary requirement to delay the effective date for 30 days following publication. This finding is based upon the fact that the United States Court of Appeals for the District of Columbia has invalidated the portion of the current regulation which is the subject of this regulatory amendment. Accordingly, the amendment to the regulation is effective upon publication.

Procedural Matters

Since the rule containing the ratio provision is enjoined, its removal will have no economic impact; therefore, it is not a major rule as defined by Executive Order 12291. Similarly, the removal of the rule will have no impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 29 CFR Part 5

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, part 5 of title 29 of the Code of Federal Regulations is amended as follows:

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

1. The authority citation for part 5 continues to read as follows:

Authority: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 5 U.S.C. 301; and the statutes listed in § 5.1(a) of this part.

§ 5.5 [Amended]

2. Section 5.5 is amended by removing paragraph (a)(4)(iv).

Signed at Washington, D.C., on this 24th day of June, 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary of Labor for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

[FR Doc. 92-15211 Filed 6-24-92; 1:07 pm]

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H.J. Res. 445/P.L. 102-303

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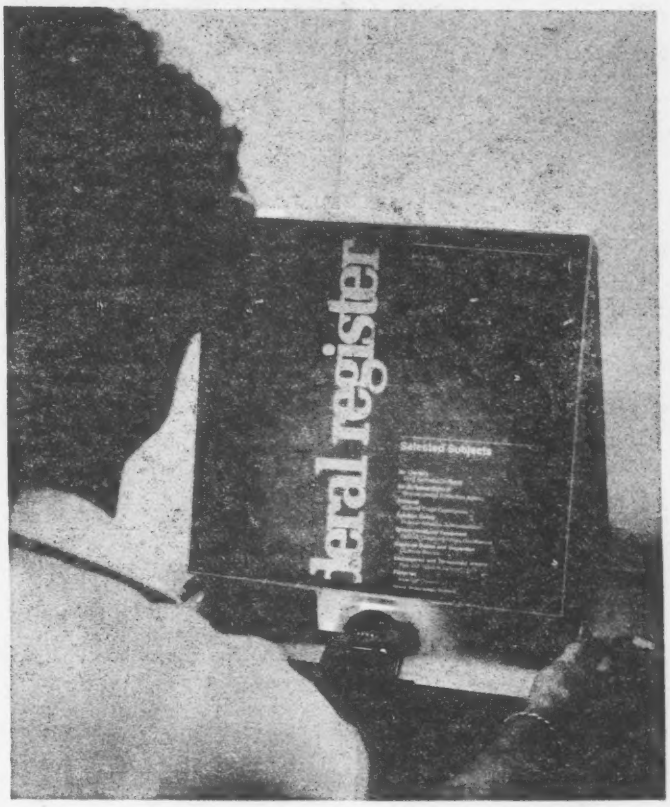

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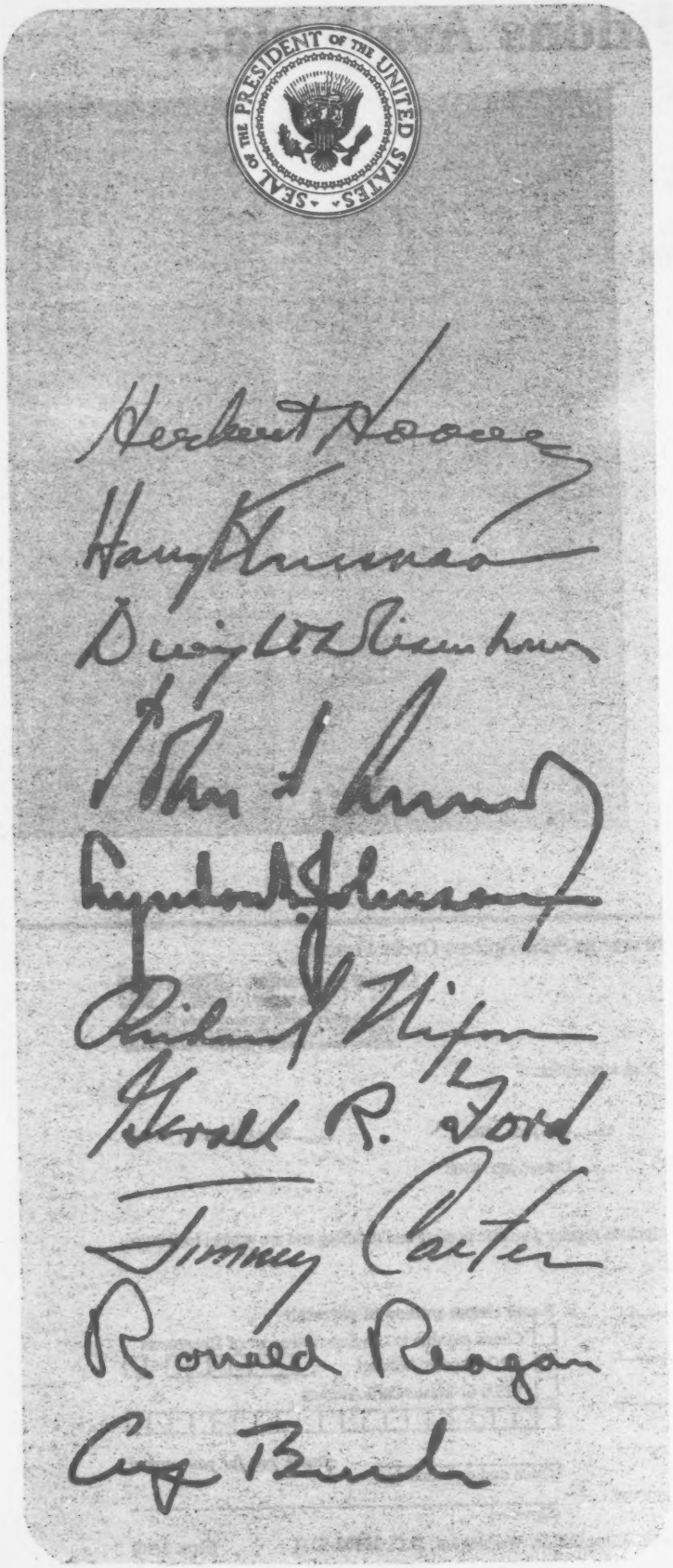

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